

In the Matter of HARBISON-WALKER REFRACTORIES COMPANY and
UNITED BRICK & CLAY WORKERS OF AMERICA, LOCAL #900, AFFILIATED
WITH THE A. F. OF L.

Case No. R-5847.—Decided September 29, 1943

Mr. B. F. Kimble, of Portsmouth, Ohio, for the Company.

Mr. Leo DeLong, of Jackson, Ohio, for the Union.

Mr. Joseph E. Gubbins, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Brick & Clay Workers of America, Local #900, affiliated with the A. F. of L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Harbison-Walker Refractories Company, Portsmouth, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Portsmouth, Ohio, on August 18, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Harbison-Walker Refractories Company is a Pennsylvania corporation having its principal offices in Pittsburgh, Pennsylvania. It is engaged in various parts of the United States in the manufacture of fire brick and other refractory materials. This case involves the Company's Sugar Camp Mine and Clay Mill Works near Portsmouth, Ohio. The mine is the sole source of supply for a brick plant operated by the Company at Portsmouth where 12,000,000 bricks are produced

annually, 30 percent of which is shipped to points outside of the State of Ohio. Approximately 30 percent of the products of the clay mill is shipped to points outside the State of Ohio. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Fire Brick & Clay Workers of America, Local #900, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In June 1943, the Union requested recognition as exclusive bargaining agent for the Company's employees at the mine and the mill involved herein. The Company notified the Union that it would agree to a consent election if the Union would agree to separate units for the mine and the mill employees. The Union rejected the Company's offer and filed its petition on July 1, 1943, wherein it requests a single unit for the employees in question.

A statement prepared by a Field Examiner, introduced in evidence, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The parties agree that production and maintenance employees should be included in the unit or units found appropriate, and that supervisory and clerical employees should be excluded. The Union seeks a single unit comprised of employees of the mine, together with those of the mill, whereas the Company contends that a separate unit should be established for each of the foregoing operations.

The record discloses that the mine and mill are situated approximately 1½ miles apart and are located near Portsmouth, Ohio. The employees of the mine are engaged in mining clay, which is transported to Portsmouth, Ohio, and there manufactured into fire bricks. The mill is engaged in crushing and sacking clay, which is supplied to the mill from a mine other than the mine involved herein. While the skill and wages of the employees in the two operations vary slightly, no substantial differences exist. Both operations are under the supervision

¹ The Field Examiner's statement shows that the Union submitted 44 membership cards, 43 of which bear apparently genuine signatures and names of persons whose names are listed on the Company's pay roll; the Company employs a total of 51 production and maintenance workers in both operations. Thirty-seven cards are dated in June, 1943, and 6 are undated.

of the Company's District Manager which, in addition to their contiguity, further establishes their community of interests in collective bargaining. There is no bargaining history between the Company and the Union, nor is any other union seeking to organize the employees in either operation. Under the circumstances, we are of the opinion that a unit composed of the employees in both the mine and mill operations is appropriate for the purposes of collective bargaining.

We find that all employees at the Company's Sugar Camp Mine and Clay Mill Works, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, and clerical employees, constitute a unit for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees within the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Harbison-Walker Refractories Company, Portsmouth, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause, to determine whether or not they desire to be represented by United Brick & Clay Workers of America, Local #900, affiliated with the A. F. of L., for the purposes of collective bargaining.